IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

Basanti Lal vs. Ajmer Vidhyut Vitaran Nigam Ltd. & Ors.
(S.B.C.Writ Petition No.4802/02)

Date of Order :- 6th October, 2006.

PRESENT

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr.A.K.Rajvanshi, Advocate for the petitioner.
Mr.Sumit Mehta, Advocate for the respondent.

This writ petition has been filed by the petitioner Basanti Lal with a limited prayer that the respondents may be directed to make payment of his salary for the period from 1.1.1988 to 16.9.1988 and further directed to give him the benefit of annual grade increments from 1988 till date and make his pay fixation and also pay him interest @ 12 % p.a. on the aforesaid dues.

The grievance of the petitioner is founded on the facts that while he was working on the post of Meter Repair and Tester-I(M.R.T.-I) in the office of Assistant Engineer(M.T.), R.S.E.B., Udaipur, a charge sheet was issued to him on 11.3.1988 of which he submitted his reply on 23.3.1988. The proceedings in the charge-sheet remained pending till 5th October, 1999 when Executive Engineer directed the Assistant Engineer (M.T.), R.S.E.B., Udaipur to present the case on behalf of the Board in the disciplinary proceedings. The Enquiry Officer recorded the statement of the petitioner on 15.10.1999 and submitted his enquiry report to Superintending Engineer but copy of such enquiry report was not served upon the petitioner. The Superintending Engineer passed an order on 28.6.2001 which obviously was based on the report of the enquiry report and a warning was given to the petitioner that he should not repeat such mis-conduct in future but no punishment was given. The respondents however did not pay his salary for the period from 1.1.88 to 16.9.88 and from the year 1988 till now no annual grade increment has been given to him and no pay fixation under revised pay scale rules has

been made. Hence this writ petition.

In reply, the respondents have come out with a plea that petitioner has concealed the order dated 19.7.2001 which was sent by the Superintending Engineer to Assistant Engineer concerned in which he was informed that the petitioner has not been allowed wages for the period he did not work on the basis of `no work no pay' and further that benefit of increment and fixation of revision of pay scale would be allowed to the petitioner but he would not be paid any financial benefits and instead would only be entitled to notional pay fixation. It has been submitted that petitioner filed injunction suit in the court of Munsif and Judicial Magistrate (South), Udaipur which was dismissed by order dated 19.1.1988 with the direction that issue with regard to outstanding salary for the aforesaid period would be taken up when the civil suit was finally decided. According to respondents, the petitioner has not been paid salary for the period from 1.1.88 to 16.9.88 because neither had he worked nor he submitted any progress report therefore the disciplinary

authority directed not to give any benefits to him. So far as benefits of pay fixation is concerned, it has been stated that the date of annual grade increment has been extended from 21.9.87 to 16.9.88. It was therefore prayed that the writ petition may be dismissed.

I have heard Mr.A.K.Rajvanshi, learned counsel for the petitioner and Mr.Sumit Mehta, learned counsel for the respondents and perused the record.

So far as filing of injunction suit alongwith temporary injunction application is concerned, it would be evident that this suit was filed in the year 1987 and temporary injunction application was rejected by the civil Court by order dated 19.1.1988. The petitioner was not granted temporary injunction on any of the reliefs prayed for by him including with regard to payment of salary for the aforesaid period and it was directed that this issue shall be taken up when the civil suit was finally disposed of. The petitioner in para 10 of the writ petition has categorically stated that this suit was dismissed in

default on 14.3.1997. If there would have not arisen any fresh cause of action subsequent to dismissal of suit in default, this Court might not have intervened in the matter. What is however significant that respondents themselves have placed on record the order dated 19.7.2001 whereby certain decisions have been taken in the note-sheet of the Presiding Officer(M&P), which is as follows :-

> "The case of Shri Basanti Lal Jain is very simple. He has not been allowed wages for the period he did not work on the basis of 'NO WORK NO PAY'. The increment etc. also to be allowed as a matter of course until unless and specific order is issued to detain the same and so also the fixation in the revised pay scales, except that Sh. B.L.Jain will not be paid any financial benefit either on account of increment or pay fixation for the period, he has not been allowed salary on the above principle of 'NO WORK NO PAY' by the court as well as by the settlement committee. Further, his service may be verified with mention at above non payment of salary."

This order itself gives rise to a fresh cause of action because the disciplinary proceedings initiated against the petitioner culminated in the order of penalty dated 28.6.2001

by which a warning was issued to him that such type of mis-conduct should not be repeated in future. This was a penalty order which was passed on the basis of charge-sheet dated 11.3.1988 and obviously it would be evident that the enquiry against the petitioner remained pending for more than a decade and finally the respondents woke up to the necessity of taking it to its logical conclusion sometime in the year 1999 and it took further two complete years to issue a warning to the petitioner.

On the question of increment, it is equally surprising to note that the petitioner's annual grade increments for the period enquiry remained pending were not granted and his pay fixation under revised pay scale rules was not made for the duration of the pendency of the enquiry which is more than a decade . And now the respondents have decided to only give him notional benefits and not the actual benefits. It is difficult to appreciate that when the enquiry remained pending for such a long time for no fault of the petitioner and delay having not been attributed to the petitioner in any

manner, firstly how could they withhold the increments and not make pay fixation under the Revised Pay Scale Rules and secondly when they decided to act after more than a decade, how such benefits could be granted to the petitioner only on notional basis. No fault can be attributed to the petitioner when the respondents themselves could not complete the enquiry for a long period of 13 years.

There was no charge of willful absence of the petitioner from services for the period from 1.1.88 to 16.9.88 nor has any such assertion made even before this Court that petitioner was absent during the said period except by making a vague and unspecific assertion that he did not work and therefore he has not been allowed salary, increment and pay fixations on the principle of `No work no pay'. Though the petitioner has asserted that he had all throughout served the respondents during the aforesaid period, the respondents have not pleaded to the contrary to assert that petitioner was not willfully absent from duties. All that they have stated is that petitioner was not paid salary for the aforesaid period because

he did not work.

As a result of the aforesaid discussion, the writ petition deserves to be allowed and is accordingly allowed. The respondents are directed to pay the petitioner outstanding salary alongwith allowances etc. for the period from 1.1.88 to 16.9.88. They are further directed to make payment of his annual grade increment starting from the year 1988 till this date and also make revision of his pay as per the Revised Pay Scale Rules introduced from time to time and pay all arrears thereof.The petitioner shall also be entitled to interest @ 6% p.a. for the period on delay all aforesaid dues. All these payments shall be made to him within a period of three months from the date of service of copy of this judgment. There shall be no order as to costs.

(MOHAMMAD RAFIQ),J.